

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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In the Matter of )  
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 Amendment of the Commission's Rules )  
 Regarding Multiple Address Systems )  
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WT Docket No. 97-81

**COMMENTS OF RADSCAN, INC.**

Radscan, Inc. ("Radscan"), by its attorneys, and pursuant to § 1.415(a) of the Commission's Rules, hereby submits its comments in response to the *Further Notice of Proposed Rule Making* in the above-captioned proceeding.<sup>1</sup> The *Notice* seeks to refresh the record in this proceeding in light of the revisions to the Commission's auction authority imposed by the Balanced Budget Act of 1997.<sup>2</sup> Of particular importance to Radscan, the *Notice* asks for comment on whether the Commission should set aside part or all of the 928/952/956 MHz MAS bands exclusively for "public safety radio services" as that term is defined in the Balanced Budget Act.<sup>3</sup>

**SUMMARY**

Radscan believes that the Commission should not restrict any part of the 928/952/956 MHz bands to "public safety radio services." Such a restriction is neither necessary to satisfy the Commission's obligations under the Balanced Budget Act, nor desirable as an alternative to the way licenses currently are awarded in these bands. Thus, there is no benefit to be gained by imposing a licensing restriction. By contrast, the costs of imposing a licensing restriction could be significant,

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1. Amendment of the Commission's Rules Regarding Multiple Address Systems, *Further Notice of Proposed Rule Making and Order*, FCC 99-101 (rel. July 1, 1999) ("*Further Notice*").
  2. Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997) (amending Section 309(j) of the Communications Act) ("*Balanced Budget Act*").
  3. *Notice* at ¶ 20.

since incumbents not meeting the public safety radio service criteria will need to be grandfathered or relocated, and either alternative is costly.

The Commission should also reject the proposal put forth by the United Telecom Council ("UTC") and others to limit eligibility in the 928/952/956 MHz bands to so-called critical infrastructure industries. There is no "infrastructure" requirement in the Balanced Budget Act or its legislative history, and the Commission should not invent one. If the Commission decides to restrict these bands to public safety radio services, it should define that category broadly, as Congress intended, in order to minimize the costs to incumbents not falling within the restricted category.

### **BACKGROUND**

Radscan is a pioneer in the application of long-range radio technology to the security industry, and has been an active participant in all significant FCC proceedings concerning the licensing and use of MAS frequencies. In 1983, following the Commission's allocation of MAS frequencies, Radscan and its manufacturing affiliate, ADEMCO, embarked upon a multimillion-dollar development effort to design MAS transmitters and receivers that are affordable, spectrum-efficient, and versatile. After years of effort, in 1985, ADEMCO began manufacturing low-cost, one-way and two-way MAS subscriber equipment, high-performance MAS master stations, and associated installation tools. This equipment is now in widespread use throughout the security industry.

Today, with licenses for about 180 MAS master stations serving over 100,000 remote units in 22 major metropolitan areas, Radscan is one of the largest MAS licensees in the United States. Radscan is in the business of providing sophisticated wireless security alarm monitoring services to central station alarm companies, such as ADT Security Systems and SecurityLink, who, in turn, are in the business of monitoring the premises of their business and residential customers. Because radio

signals are not influenced by the same factors that may interfere with wireline communications, Radscan's services are used to supplement and enhance the reliability of existing security monitoring systems. Many of Radscan's remote units are placed in high-risk security installations such as banks and jewelry stores.

Radscan and ADEMCO have a proven track record of success in the security industry. ADEMCO's equipment is approved by Underwriters' Laboratories for the highest grades of security service. In addition, ADEMCO's equipment is qualified to meet building code requirements consistent with standards adopted by the National Fire Prevention Association.

### **DISCUSSION**

In the Further Notice, the Commission seeks comment on whether it should reserve all or part of the 928/952/956 MHz bands exclusively for "public safety radio services," and if it does so, whether it should grandfather all existing services currently being provided in these bands.<sup>4</sup> As demonstrated below, the Commission should not alter the eligibility criteria for licensing in these bands. No change to the licensing procedures for these bands is required by the Balanced Budget Act, and grandfathering or relocating existing services can have the potential to be costly and disruptive.

#### **I. The Balanced Budget Act Does Not Require the Commission to Alter the Current Licensing Procedures in the 928/952/956 MHz Bands.**

The Commission fundamentally misconceives the nature of its obligations under the Balanced Budget Act when it tentatively concludes that if it did not restrict the 928/952/956 MHz bands to "public safety radio services" it would be required to grant licenses for the bands through

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4. *Further Notice* at ¶ 20.

a system of competitive bidding.<sup>5</sup> That tentative conclusion is incorrect as a matter of law. The Balanced Budget Act amended the Commission's auction authority to state as follows: "If, *consistent with the obligations described in paragraph (6)(E)*, mutually exclusive licenses are accepted for any initial license or construction permit," then the Commission must auction the licenses unless they fall within a limited number of exemptions including the exemption for public safety radio services.<sup>6</sup> The "obligations described in paragraph (6)(E)" *require* the Commission to use "engineering solutions, negotiation," and other means at its disposal to avoid mutually exclusive applications.<sup>7</sup> Thus, before the Commission can claim that it is required to award licenses for a particular band by auction, it must have tried, and failed, to avoid mutual exclusivity in that band. Voluminous evidence submitted in a closely related proceeding<sup>8</sup> demonstrates that Congress intended that the Commission give serious consideration to avoiding instances of mutual exclusivity before turning to auctions.<sup>9</sup>

The licensing procedures in the 928/952/956 MHz bands virtually eliminate instances of mutually exclusive applications. Applications are subject to prior frequency coordination with

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5. *Further Notice* at ¶ 21.

6. 47 U.S.C. § 309(j)(1) (emphasis added).

7. 47 U.S.C. § 309(j)(6)(E).

8. *See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz, Notice of Proposed Rule Making*, WT Docket No. 99-87, FCC 99-52 (rel. Mar. 25, 1999).

9. *See, e.g., Comments of the American Petroleum Institute* at 14-16 & Exh. A; *Comments of Commonwealth Edison Co.* at 5-6; *Comments of UTC* at 5-8 (all filed Aug. 2, 1999 in WT Docket No. 99-87).

existing licensees, permittees, and applicants.<sup>10</sup> After frequency coordination, applications are accepted on a first-come, first-served basis.<sup>11</sup> Thus, only simultaneously filed applications could be mutually exclusive, a situation that is all but ruled out by the coordination procedures used in the bands. While failure to consider measures to *avoid* mutual exclusivity in a given band before commencing to award licenses in that band by auction would be enough to violate Section 309(j), removing or altering measures that already exist in order to *create* mutual exclusivity would be an even more egregious violation. Accordingly, the Commission need not alter the current licensing procedures in the 928/952/956 MHz bands, which already serve the goals of the Balanced Budget Act.

**II. Restricting the 928/952/956 MHz Bands to Public Safety Radio Services Would Impose Significant Costs on Incumbent Licensees Not Meeting the Proposed Restriction.**

As demonstrated above, the Commission would achieve no benefit by altering the current licensing procedures in the 928/952/956 MHz bands. However, restricting the bands to public safety radio service licensees, as the Commission has suggested,<sup>12</sup> would create a significant burden on incumbent licensees who do not meet the public safety radio service eligibility criteria.

As Radscan and others have already demonstrated in great detail in this proceeding, certain services provided through the use of MAS frequencies in the 928/952/956 MHz bands depend upon the service provider's ability to continue using specific channels within the bands. For example, although Radscan uses only four channels in the 928/952/956 MHz bands, it simply cannot be grandfathered or relocated from those four channels without causing serious disruptions in security

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10. 47 C.F.R. § 101.103(d).

11. 47 C.F.R. § 101.105(c)(3)(i) (MAS applicants required to demonstrate separation from existing stations and pending applications).

12. *See Notice* at ¶ 20.

or the discontinuance altogether of the public safety services that Radscan provides. The technical and operational reasons for this situation have been thoroughly documented.<sup>13</sup> Cellnet Data Systems, another intensive user of the 928/952/956 MHz bands, also has demonstrated that its equipment, designed for use in specific bands, cannot be redesigned for other frequency bands without incurring significant costs and delays.<sup>14</sup> Even the utility companies, who recently have argued in favor of freezing MAS incumbents in place,<sup>15</sup> acknowledge the immense burdens associated with grandfathering their *own* operations in the MAS bands.<sup>16</sup> Utility companies have also documented the great costs associated with relocating incumbent MAS operations to other bands.<sup>17</sup> These parties cannot have it both ways; if they believe, as Radscan does, that freezing incumbents in place and relocating incumbents to other spectrum are costly and disruptive, then they should not be advocating the imposition of such costs and disruptions on other parties.

Therefore, although the Commission has, when changing eligibility rules for other spectrum, frozen incumbents in place<sup>18</sup> or relocated incumbents to other spectrum,<sup>19</sup> these are not viable options

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13. See Comments of Radscan in WT Docket No. 97-81 at 8-11 & Engineering Statement (Attachment A) (filed April 21, 1997); Reply Comments of Radscan in WT Docket No. 97-81 at 4-6 (filed May 16, 1997).

14. See Comments of Cellnet in WT Docket No. 97-81 at 8 (filed April 21, 1997).

15. Joint Supplemental Comments at 20 (proposing to grandfather incumbents "provided they do not expand their systems or otherwise encroach on the operations of Critical Infrastructure licensees").

16. See Comments of UTC in WT Docket No. 99-87 at 22-24 (filed Aug. 2, 1999) (arguing that incumbent licensees must not be frozen in place, but instead must be permitted to expand their systems, both before and after the restrictions go into effect).

17. See Comments of API in WT Docket No. 99-87 at 13-14; Comments of UTC in WT Docket No. 99-87 at 21-22; Comments of American Electric Power Service Corp. in WT Docket No. 99-87 at 3 (describing the costs of relocation as "staggering").

18. See, e.g., Amendment of Part 90 of the Commission's Rules to Facilitate Further  
(continued...)

in the 928/952/956 MHz bands. Indeed, on a previous occasion the Commission found it necessary to *rescind* a rule that would have changed the technical criteria for licensing in the MAS bands and effectively frozen incumbents in place, acknowledging the special requirements of services in these bands.<sup>20</sup> The Commission could devise a relocation plan that would require the parties desiring to take advantage of vacated spectrum to pay for the relocation of incumbent licensees. However, such a plan would only succeed in redistributing the costs of relocation, not in eliminating them. Given that there is no benefit to be achieved by imposing new licensing restrictions, there is no justification for imposing the costs of relocation on anyone.

**III. If the Commission Does Restrict the 928/952/956 MHz Bands to Public Safety Radio Services, it Should Adopt an Expansive Definition of That Term, Consistent with Congressional Intent.**

As demonstrated above, the Commission should not restrict the 928/952/956 MHz bands to public safety radio services since such a restriction could impose significant costs without any accompanying benefit. If the Commission nevertheless adopts such a restriction to these bands, it should keep in mind that Congress has encouraged a broad interpretation of "public safety radio services" that encompasses many, if not all, of the uses of the 928/952/956 MHz bands. By adopting an expansive definition of this term consistent with Congressional intent, the number of incumbent licensees in the bands who face grandfathering or relocation will be minimized.

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18. (...continued)  
Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order*, 11 FCC Rcd 1463, 1513 (1995).
  19. See, e.g., Amendment of the Commission's Rules to Establish New Personal Communications Services, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 4965 (1994).
  20. See Amendment of the Rules to Eliminate Grandfathering Provisions Applicable to Licensees on MAS Frequencies, *Report and Order*, 8 FCC Rcd 2801 (1993).

In the Balanced Budget Act, Congress expanded the Commission's authority to award licenses by competitive bidding, but carved out an exemption for "public safety radio services." The relevant statutory language excludes from auctions licenses "for public safety radio services, *including* private internal radio service used by State and local governments and non-government entities *and including* emergency road service provided by not-for-profit organizations that -- (i) are used to protect the safety of life, health or property; and (ii) are not made commercially available to the public."<sup>21</sup> This language consists of a preamble and a definition. The preamble describes two specific types of services as examples of the kinds of services that Congress meant to include within the exemption: private internal radio service used by State and local governments and non-government entities, and emergency road service provided by not-for-profit organizations. This description is inclusive, as demonstrated by its repeated use of the word "including," and clearly cannot be read to exclude other types of services. Following this preamble, the statute sets forth the two criteria that a radio service must meet in order to be exempt from auctions. It must be used to protect the safety of life, health or property, and it must not be made commercially available to the public. There is no requirement that the "sole" or "principal" use of the radio service be to protect the safety of life, health or property. The exemption, on its face, applies to *any* radio service that is used to protect the safety of life, health, and property, as long as the radio service is not made commercially available to the public.

Under this interpretation, it likely applies to most, if not all, of the current MAS licensees in the 928/952/956 MHz bands. The Commission has already determined that most of the current licensees use their frequencies for private, internal purposes, and do not make capacity on their

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21. 47 U.S.C. § 309(j)(2)(A) (emphasis added).



frequencies commercially available.<sup>22</sup> Moreover, most licensees can likely demonstrate some way in which their use of their frequencies are safety-related. In addition, the legislative history deliberately encourages such a broad reading of the public safety radio services exemption.<sup>23</sup> Accordingly, to minimize the ill effects of restricting the 928/952/956 MHz bands to public safety radio services, the Commission should clarify that any licensee that uses MAS frequencies for private, internal use, and can demonstrate that at least some of those uses are safety-related, continues to be eligible for licensing in those bands.

The Commission should specifically reject the suggestion, advanced in *ex parte* comments in this proceeding, to limit eligibility for the 928/952/956 MHz bands to so-called critical infrastructure industries.<sup>24</sup> While it is clear that Congress intended private internal radio services used by utilities, railroads, and pipelines to be included within the definition of “public service radio service,”<sup>25</sup> it is equally clear that the definition is not restricted to such services. There is no “infrastructure” requirement to be found anywhere in the Balanced Budget Act or its legislative history, and the Commission should not invent one. Restricting eligibility for the 928/952/956 MHz bands in this fashion would prevent licensing for many of the valuable public safety services which current users of the MAS spectrum are able to provide, without offering any offsetting benefits. If

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22. Amendment of the Commission’s Rules Regarding Multiple Address Systems, *Notice of Proposed Rule Making*, 12 FCC Rcd 7973, 7980 [¶¶ 12-13] (1997).

23. See H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997) (term is “much broader” than previous definition of public safety services).

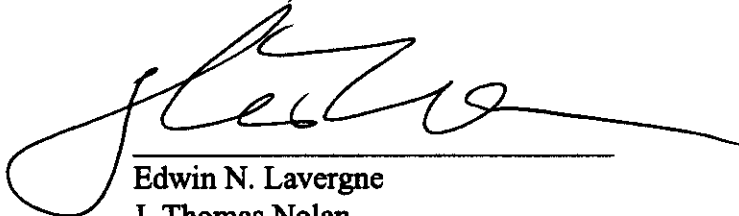
24. See Joint Supplemental Comments, *supra* note 18, at 20.

25. See Conference Report at 572.

the Commission feels the need to allocate spectrum specifically for use by infrastructure industries, it should do so in the 932/941 MHz bands, which currently are nearly vacant.<sup>26</sup>

Respectfully submitted,

RADSCAN, INC.

A handwritten signature in black ink, appearing to read 'Edwin N. Lavergne', written over a horizontal line.

Edwin N. Lavergne

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September 17, 1999

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26. See Further Notice at ¶ 11.

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